

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3546-02  
Bill No.: HB 1816  
Subject: Employees-Employers; Health Care; Health Care Professionals; Hospitals;  
Physicians  
Type: Original  
Date: March 20, 2008

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Bill Summary: This legislation establishes the Health Care Whistleblower Protection Act to protect certain health care professionals from retaliatory actions by employers for reporting violations of law.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>
General Revenue	(Unknown Greater than \$200,000)	(Unknown Greater than \$200,000)	(Unknown Greater than \$200,000)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(Unknown Greater than \$200,000)</b>	<b>(Unknown Greater than \$200,000)</b>	<b>(Unknown Greater than \$200,000)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 7 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## **FISCAL ANALYSIS**

### **ASSUMPTION**

Officials from the **Department of Labor and Industrial Relations, Office of Administration** and the **Department of Insurance, Financial Institutions & Professional Registration** each assume the proposal would have no fiscal impact on their respective agencies.

Officials from the **Office of the Attorney General** assume any potential costs arising from this proposal can be absorbed with existing resources.

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

**Oversight** assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Department of Health and Senior Services** state the following fiscal impact for Section 197.285.4 and 5:

#### **Office of the General Counsel (OGC):**

To effectively and efficiently comply with the requirements of HB 1816, OGC will need to hire additional investigators, staff attorneys, and administrative support staff. The investigators would be necessary to perform the investigations into the cases where an employee feels he/she has received an "adverse action" for reporting a "protected activity". The investigators will conduct interviews with personnel and create testimony and documentation. The staff attorneys

ASSUMPTION (continued)

would be needed to evaluate the evidence from the investigations and ensure HIPAA compliance. They would also prepare the reports for submission and public disclosure and correspond with the other attorneys working on the case. The administrative support staff would be needed to assist the investigators and the attorneys in the general clerical duties of the positions such as preparing correspondence and tracking schedules and the case log. It is difficult to determine the number of new investigations, therefore OGC is unable to determine the staffing level that would be required to comply with the proposed legislation. The cost of the additional OGC staff is unknown, but would be greater than \$100,000.

*Division of Regulations and Licensure (DRL):*

These sections of the proposal require DRL to commence an investigation within two business days of receipt of an employee complaint from a hospital or ASC and within one day of the conclusion of the investigation to make certain information a matter of public record. Additional investigators for DRL would be needed to look into items such as alleged facility mismanagement, fraudulent activity, unethical, immoral, or illegal business practices; alleged violations of federal or state laws or regulations regarding patient care, patient safety, or facility safety; alleged violations of professional standards of conduct or accepted standards of quality patient care; and/or the ability of employees to perform their assigned duties consistent with professional standards of conduct or accepted standards of quality patient care. It is difficult to determine the number of additional investigations, therefore DRL is unable to determine the staffing level that would be required to comply with the proposed legislation. The cost of the additional DRL staff is unknown, but would be greater than \$100,000.

<u>FISCAL IMPACT - State Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
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**GENERAL REVENUE FUND**

Costs - Department of Health and Senior Services

Office of the General Counsel Costs	(Unknown Greater than \$100,000)	(Unknown Greater than \$100,000)	(Unknown Greater than \$100,000)
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Division of Regulations and Licensure Costs	(Unknown Greater than \$100,000)	(Unknown Greater than \$100,000)	(Unknown Greater than \$100,000)
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<u>Total Costs - DHSS</u>	(Unknown Greater than \$200,000)	(Unknown Greater than \$200,000)	(Unknown Greater than \$200,000)
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<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b><u>(Unknown Greater than \$200,000)</u></b>	<b><u>(Unknown Greater than \$200,000)</u></b>	<b><u>(Unknown Greater than \$200,000)</u></b>
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<u>FISCAL IMPACT - Local Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
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<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Small Business

Ambulatory surgical centers and a few hospitals (meeting the definition of a small business) could be affected if fines were to be levied against them.

### FISCAL DESCRIPTION

The proposed legislation establishes the Health Care Whistleblower Protection Act which prohibits employers from taking retaliatory action against employees who disclose or threaten to disclose alleged prohibited activities or provide information or testify before any public body regarding violations which the employee reasonably believes constitutes improper quality of patient care. Hospitals and surgical centers are required to:

- (1) Appoint a compliance officer;
- (2) Notify employees of their right to disclose specified information;
- (3) Provide forms to document alleged violations of federal and state law concerning patient care and safety and facility safety;
- (4) Allow employees reporting violations to do so anonymously;
- (5) Forward complaints to the Department of Health and Senior Services and the Attorney General within two business days;
- (6) Initiate an internal investigation of the complaint; and
- (7) Make all information that has been disclosed, collected, and maintained available to the Department at all times and reviewed by the Department at least annually.

All complaints must be filed with both the Department and the Attorney General. Within two business days of receipt of a complaint, the Department must begin an investigation. The Department's investigation must be completed within 30 calendar days following receipt of the complaint. Within one business day of the conclusion of the investigation, the Department is required to make public the original complaint, records of the investigation, and conclusions. The Department must also maintain a log of complaint forms, notify all interested parties of the outcome of the investigation, and forward the investigation record and conclusions to the Attorney General. The legislation requires the Attorney General to perform an independent review of the complaint and the factual record of the investigation within 60 calendar days of receiving the materials from the Department.

Within one year, an employee may bring a civil action against any employer violating the provisions of the legislation. The legislation allows the court to issue an injunction to stop the employer's illegal activity; reinstate the employee's position, benefits, and seniority rights; and

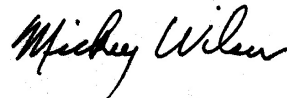
FISCAL DESCRIPTION (continued)

order payment of lost wages, reasonable litigation costs, attorney fees, and punitive damages. If an employee brings an action without basis in law or fact, a court may order the employee to pay reasonable attorney fees and court costs. Employers must conspicuously display notices of the employee protections specified in the legislation. Employers violating these provisions may be fined an amount not to exceed \$1,000 for a first offense and not more than \$5,000 for subsequent offenses.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Attorney General  
Office of Administration  
Department of Insurance, Financial Institutions & Professional Registration  
Department of Health and Senior Services  
Department of Labor and Industrial Relations  
Office of the Secretary of State



Mickey Wilson, CPA  
Director  
March 20, 2008